642 635 their actions lay through the central authorities and not through the Provincial Assemblies.

It may, therefore, be said that, although the Provinces were endowed with comparatively far-reaching administrative rights and duties, the State had extensive supervisory rights.

642 635 C92 As regards judicial rights, Article 82 enunciates the principle that "The whole judicial system lies within the competence of the State".[1] It may, however, be noted that, although the Provinces had no influence over the election of the judges of the ordinary Courts, who were appointed on the advice of the Senates by the Federal Ministry and the President,[2] they had some control over appointments to the Administrative and Constitutional Courts. For instance, by Article 135, the nominations of the Federal Government for the posts of Vice-president, and half the members of the Administrative Court, required the assent of the Federal Council. Article 147 laid down somewhat similar provisions for appointments to the Constitutional Court.[3] But this case differed from the former in that the Federal Council had no influence over the appointment of the Vice-president.

It is clear, however, that the share of the Provinces in the working of the judiciary was even smaller than their share in legislation and administration.

642 635 But, while there can be no doubt that the substance of power lay with the State, lip-service was certainly freely paid to the federal idea. The outstanding example of this is Article 2, (1),[4] to which reference has already been made. Another example may be taken from Article 2, (2), where reference is made to the 'independence' of the Provinces. But, as Kelsen points out, this word has no exact legal meaning.[5] Article 15, (1), refers to cases not expressly made over to the State, as remaining within

[1] Kelsen comments on this: 'Dass die gesamte Gerichtsbarkeit dem Bund vorbehalten ist, bedeutet einen, für einen Bundesstaat ungewöhnlichen Grad von Zentralisation.' (Op. cit., vol. v, p. 176.)

[2] Article 86, (1).

[3] In this case, however, the Federal Council was responsible for the actual appointments. It did not merely give its assent to proposals of the Government.

[4] 'Österreich ist ein Bundesstaat.'

[5] Op. cit., vol. v, pp. 66–7.

642 635 646 should be made in the constitution of the Federal Council without its assent. And assent required a majority vote in favour from the representatives of at least four Provinces. A minority of the Provinces could thus prevent an amendment.[1]

692 Finally, by Article 132, if a Province were involved in a dispute before the Administrative Court, the case had, as a rule, to be tried by a Senate having among its members a judge who formerly belonged to the judicial or administrative service of that Province.[2]

642 635 But although certain actions could not be carried through without the consent of the Provinces, effective precautions were taken to ensure that the Provinces should never become overpowerful.

Articles 95–120, for instance, gave the State control over the political and social structure of the Provinces. The provisions ensuring democratic government, safeguarding minority rights, and guaranteeing to the State extensive supervisory rights, guarded against the possibility of the growth of a strong, united opposition to the central Government from reactionary parties in the Provinces. The extent to which State control over the Provinces went may be seen by Article 100, which provided that a Provincial Council could be dissolved by the Government, if the consent of the Federal Council was obtained.[3] The Article provides an example of the spirit of compromise which pervades the Austrian constitution, for, while the federal principle is undermined by the provision that a Provincial Assembly can be dissolved by a State organ, it is safeguarded by the provision that the assent of the highest federal organ shall be necessary for such a dissolution.

642 635 692 The Administrative and the Constitutional Courts were clearly intended as State organs (although, as has been pointed

[1] The provisions of this article should have been applied also to Article 34 (dealing with representation of the Provinces in the *Bundresat*). Originally Articles 34 and 35 were one. When they were separated the constitutional committee omitted to make Article 35, (4), apply to both of them, though it was clearly far more important that it should apply to Article 34.

[2] Cf. with provisions for trying cases before the Permanent Court of International Justice (Statute of the Court, Article 31).

[3] The consenting vote, however, required a quorum of one-half of the members, and a two-thirds majority.

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out, the Provinces exercised a certain indirect control over the appointment of their personnel). For instance, if a federal minister considered that the interests of the State had been injured by an erroneous decree of a provincial authority, he could bring the matter before the Administrative Court. No such provision, however, was made for appeals by provincial ministers against State decrees.[1]

Finally, the following provisions may be noted, which though not themselves of great importance, none the less indicate the general tendency to ignore the federal principle. By Article 41, (2), for instance, voters in three different Provinces could join in submitting an Initiative, provided that in each Province half of the qualified voters agreed to it. This was to be an alternative to an Initiative signed by two hundred thousand of the qualified voters in one Province, and was intended to safeguard the rights of minorities in the smaller Provinces. It was clearly, however, an infringement of the federal principle.[2]

Finally, the formula used in the publication of laws is "The National Council has decided . . .", etc. (If the law is passed

[1] Article 129, (2). This may be compared with Article 140, (1), regulating appeals to the Constitutional Court. In this case the right of appeal is guaranteed both to the State and to the Provinces.

It may be noted that in the important sphere of finance, the control of the State was to be even further extended, by the Finance Constitutional Law of 3 March 1922 (B. G. Bl. Nr. 124). If a proposed provincial law dealing with financial matters was vetoed by the Federal Government, its re-passage by the Province concerned, with a special majority, did not settle the matter. 'In diesem Falle kann nämlich die Bundesregierung den Einspruch trotz des Wiederholungsbeschlusses aufrechterhalten. Der dadurch entstandene Konflikt zwischen Bundesregierung u. Landesgesetzgebung wird durch einen ständigen gemeinsamen Ausschuss des Nationalrates u. des Bundesrates entschieden. Dieser hat nämlich zu beschliessen, ob der Einspruch aufrecht zu bleiben hat, oder nicht. Entscheidet sich der Ausschuss für den Einspruch der Bundesregierung, erhält deren Veto einen absoluten Charakter.' (Kelsen, *Jahrbuch des öffentlichen Rechts*, vol. xi, p. 258.)

[2] This article may be compared with Article 15, (3). In this case, the Provinces must co-operate in the passage of supplementary legislation under Articles 11 and 12. If they fail to do so, the right to pass such legislation is transferred to the federal minister. These two articles might seem to conflict with Article 107. But Article 107 is probably intended to prevent a combination of Provinces hostile to the central Government (cf. with Imperial Decree of 1860). Co-operation between the Provinces was not, on the whole, encouraged. By Article 107, for instance, Provincial Councils were forbidden to communicate with one another, except in matters falling within their autonomous sphere of action.